

IN THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF PENNSYLVANIA

ELIZABETH STEWART, a minor,	:	
BY MARY LOUISE JOHNSON,	:	CIVIL ACTION
guardian ad litem	:	
	:	
v.	:	
	:	
AUBRY TILLMON,	:	
POLICE OFFICER MICHAEL TRASK, BADGE	:	
#9636,	:	
POLICE OFFICER MARK DESIDERIO,	:	
BADGE #5902, and	:	
CITY OF PHILADELPHIA	:	NO. 02-7703

MEMORANDUM AND ORDER

Norma L. Shapiro, S.J.

July 8, 2003

Background and Procedural History

Plaintiff Elizabeth Stewart ("Stewart") was injured during a car chase involving her brother, Aubry Tillmon ("Tillmon"),<sup>1</sup> and the two defendant Philadelphia police officers. Stewart filed this action, alleging federal constitutional violations against the officers, and state law claims against the officers and the City of Philadelphia, in the Court of Common Pleas, Philadelphia County, on September 17, 2002. Defendants removed the action to federal court, and by order dated December 30, 2002, the court severed Stewart's state law claims. (Paper #21.) Plaintiff was ordered to proceed first with her federal claims. (Id.)

Defendant officers filed a motion for summary judgment as to

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<sup>1</sup>Aubry Tillmon ("Tillmon"), currently incarcerated, also was named as a defendant in this action. By order dated December 11, 2002, default was entered as to Tillmon; however, the court chose to reserve the entry of default judgment until the conclusion of the action.

Stewart's federal claims. (Paper #27.) On June 27, 2003, this court issued a memorandum and order denying defendants' motion for summary judgment as to plaintiff's claim that the initial stop of the vehicle in which she was a passenger violated her Fourth Amendment rights, and granting summary judgment in favor of defendants as to plaintiff's allegation that her subsequent detention violated her Fourth Amendment rights and her claim of deprivation of substantive due process under the Fourteenth Amendment. (Paper #40.)

Following the decision, a conference was held to determine whether or not the action would proceed to trial and when. Plaintiff objected to proceeding immediately on all remaining issues because state issues had been severed. A continued date was proposed, but the City was not able to produce one of the defendants on the new date.

Stewart then filed a Motion to Withdraw All Federal Claims and Remand to the Philadelphia Court of Common Pleas for a New Trial On State Law Claims (Paper #41); she argues that defendants will not suffer prejudice should this court decline to exercise pendent jurisdiction over the remaining state law claims, see 28 U.S.C. § 1367(a) ("Except as provided ... in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original

jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." ). Defendants oppose the motion to remand, but not the motion to withdraw the only remaining federal claim. (Paper #42.) Invoking "judicial economy" and "fairness to the parties," defendants argue that this court should retain jurisdiction because the action is at the final stages of litigation. (Id.)

### Discussion

Summary judgment was granted as to two of Stewart's three federal claims, and defendants do not oppose Stewart's motion to withdraw her remaining federal claim. Therefore, the court has no independent jurisdictional basis over what remains of this action. A court may, under such circumstances, decline to exercise supplemental jurisdiction over pendent state law claims under 28 U.S.C. § 1367(c)(3) ("The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if ... the district court has dismissed all claims over which it has original jurisdiction.")

"Where the claim over which a district court has original jurisdiction is dismissed before trial," the court must remand or dismiss the pendent state law claims "unless considerations of judicial economy, convenience, and fairness to the parties provide an affirmative reason for doing so." Borough of West Mifflin v. Lancaster, 45 F.3d 780, 788 (3d Cir. 1995) (citing Growth Horizons,

Inc. v. Delaware County, 983 F.2d 1277, 1284 (3d Cir. 1993)). The Court of Appeals has stated:

In passing [in Growth Horizons], we suggested that if the dismissal of the main claim occurs late in the action, . . . knocking [pendent claims] down with a belated rejection of supplemental jurisdiction may not be fair. We did not say that on the facts presented, however, the district court must hear the pendent claims given these fairness concerns.

Annulli v. Panikkar, 200 F.3d 189, 203, n.14 (3d Cir.1999)

(affirming district court's refusal to exercise supplemental jurisdiction despite "two years of litigation, fifteen pages of court docket, 1,800 pages of deposition testimony, and 2,800 pages of discovery documents").

Here, considerations of judicial economy, convenience, and fairness to the parties do not provide affirmative reasons to exercise supplemental jurisdiction over Stewart's state law claims. Though defendants correctly note this action was slated for trial July 7, 2003, the trial was to be on the federal claims only. Stewart's federal and state law claims were severed by the court's order dated December 30, 2002. A trial date for Stewart's state law claims had not yet been set. Following a telephone conference with counsel after partial summary judgment had been granted, it was determined that, were the court to allow the parties time to prepare for litigation of the state law claims, at least one party would not be attainable for the next available trial date. It is not clear that remand will result in

delay of this action's final disposition, and judicial economy does not require the court to exercise supplemental jurisdiction.

Both parties have engaged in substantial discovery, though both can use this evidence to litigate the remaining claims in state court. See Washington v. City of Chester, 1997 U.S. Dist. LEXIS 20815, \*12 (E.D. Pa. Dec. 31, 1997). Defendants argue those claims mirror Stewart's former federal claim under the Fourteenth Amendment, but no federal policies are implicated and the issues that remain for determination are not routine factual questions or simple principles of Pennsylvania law. Id. For example, whether the City is immune from liability under the Political Subdivision Tort Claims Act, 42 Pa. Cons. Stat. Ann. §§ 8541 et seq. remains to be determined. Cf. Atlantic Used Auto Parts v. City of Philadelphia, 957 F. Supp. 622, 628 (E.D. Pa. 1997) (comity considerations outweighed possible delay in action where only questions of Pennsylvania state law remained). Accordingly, this court now declines to exercise jurisdiction under 28 U.S.C. § 1367(c) and this action is remanded to state court. The state court's jurisdiction over this action includes the default entered against defendant Aubry Tillmon.

An appropriate order follows.

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POLICE OFFICER MICHAEL TRASK, BADGE	:	
#9636,	:	
POLICE OFFICER MARK DESIDERIO,	:	
BADGE #5902, and	:	
CITY OF PHILADELPHIA	:	NO. 02-7703

ORDER

AND NOW, this 8<sup>th</sup> day of July, on consideration of  
Plaintiff's Motion to Withdraw All Federal Claims and Remand to

the Philadelphia Court of Common Pleas for a New Trial On State Law Claims (Paper #41) and Defendants' Desiderio and Trask's response thereto (Paper #42), it is hereby **ORDERED** that:

1. Plaintiff's Motion to Withdraw All Federal Claims and Remand to the Philadelphia Court of Common Pleas for a New Trial On State Law Claims (Paper #41) is **GRANTED** in part. Having granted defendants summary judgment on plaintiff's claims regarding detention and substantive due process, the court now **DISMISSES with prejudice** plaintiff's remaining claim alleging an unreasonable stop, for which defendants were not entitled to qualified immunity.

2. This action, including the default entered against defendant Aubry Tillmon, is **REMANDED** to the Philadelphia Court of Common Pleas **FORTHWITH**.

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S.J.